No. 17-530

IN THE

Supreme Court of the United States

WISCONSIN CENTRAL LTD.; GRAND TRUNK WESTERN RAILROAD COMPANY; AND ILLINOIS CENTRAL RAILROAD COMPANY,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED NOV. 7, 2017
CERTIORARI GRANTED JAN. 12, 2018

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Docket Excerpts, No. 16-3300, *Wisconsin Central Limited v. USA*, U.S. Court of Appeals for the Seventh Circuit JA1

Docket Excerpts, No. 1:14-cv-10243, *Wisconsin Central Ltd. v. USA*, U.S. District Court for the Northern District of Illinois JA19

Stipulations of Fact (October 27, 2015) JA34

General Docket
Seventh Circuit Court of Appeals

Court of Appeals Docket #: 16-3300	
Docketed:	08/29/2016
Nature of Suit:	2870 Tax Suits
Termed:	05/08/2017
Wisconsin Central Limited v. USA	
Appeal From:	Northern District of Illinois, Eastern Division
Fee Status: Paid	
Case Type Information:	
1) civil	
2) us	
3) -	
Originating Court Information:	
District:	0752-1 : 1:14-cv-10243
Trial Judge:	Gary Feinerman, District Court Judge
Date Filed:	12/22/2014
Date Order/ Judgment:	07/08/2016
Date NOA Filed:	08/29/2016
Prior Cases:	
None	
Current Cases:	
Consolidated	
Lead:	16-3300
	16-3300
Member	16-3303
	16-3304
Start	08/31/2016
	08/31/2016
End	

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WISCONSIN CENTRAL LIMITED,
Plaintiff - Appellant

v.

UNITED STATES OF AMERICA,
Defendant - Appellee

08/29/2016	1 36 pg, 487.91 KB	U.S. civil case docketed. Fee paid. Transcript information sheet due by 09/12/2016. Docketing Statement due for Appellant Wisconsin Central Limited by 09/06/2016. Appellant's brief due on or before 10/11/2016 for Wisconsin Central Limited. [1] [6779052] [16-3300] (FP)
08/31/2016	2 2 pg 119.78 KB	ORDER: The court, on its own motion, orders that these appeals are CONSOLIDATED for purposes of briefing and disposition. The briefing schedule is as follows: Appellants' respective briefs due on or before 10/11/2016 for Wisconsin Central Limited, Illinois Central Railroad Company and Grand Trunk Western Railroad Company. Appellee's consolidated brief due on or before 11/10/2016 for United States of America. Appellants' respective reply briefs, if any, are due on or before 11/28/2016 for Appellants Wisconsin Central Limited, Illinois Central Railroad Company and Grand Trunk Western Railroad Company. Counsel for appellants are encouraged to avoid unnecessary duplication by filing a joint brief or a joint appendix or by adopting parts of a co-

		appellant's brief. Duplicative briefing will be stricken and may result in disciplinary sanctions against counsel. See United States v. Torres, 170 F.3d 749 (7th Cir. 1999); United States v. Ashman, 964 F.2d 596 (7th Cir. 1992). Appellants, however, may not adopt the "Jurisdictional Statement" of another. Each appellant's brief must include a complete "Jurisdictional Statement". Appellee's brief must comply with Circuit Rule 28(b). DW [2] [6779497] [16-3300, 16-3303, 16-3304] (CD)
09/02/2016	3 4 pg, 505.19 KB	Docketing Statement filed by Appellant Wisconsin Central Limited. Prior or Related proceedings: No. [3] [6779964] [16-3300] (McKenna, William)
09/09/2016	4 3 pg, 188.04 KB	Added Attorney(s) Jacob Earl Christensen for party(s) Appellee USA, in case 16-3300 Attorney(s) Jacob Earl Christensen for party(s) Appellee USA, in case 16-3303 Attorney(s) Jacob Earl Christensen for party(s) Appellee USA, in case 16-3304 per appearance form. Appearance form filed by Attorney Jacob E. Christensen for Appellee USA in 16-3300, 16-3303, 16-

		3304. [4] [6781272] (L-Yes; E-Yes; R-No) [16- 3300, 16-3303, 16-3304]--[Edited 09/09/2016 by AD to reflect the addition of counsel.] (Christensen, Jacob)
09/12/2016	5 2 pg, 252.66 KB	Circuit Rule 26.1 Disclosure Statement and Appearance filed by Attorney William J. McKenna, Jr. [5] [6781800] (L-Yes; E-Yes; R-No) [16-3300, 16-3303, 16-3304] (McKenna, William)
09/12/2016	6 1 pg, 142.37 KB	Filed Certificate of Service to Disclosure Statement/Appearance of William J. McKenna, Jr. filed on 09/12/2016 by Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16-3304. [6] [6781804] [16- 3300, 16-3303, 16-3304] (McKenna, William)
09/12/2016	7 2 pg 253.83 KB	Circuit Rule 26.1 Disclosure Statement and Appearance filed by Attorney Jonathan W. Garlough for Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16-3304. [7]

		[6781810] (L-No; E-Yes; R-No) [16-3300, 16-3303, 16-3304] (Garlough, Jonathan)
09/12/2016	8 1 pg, 142.37 KB	Filed Certificate of Service to Disclosure Statement/Appearance of Jonathan W. Garlough filed on 09/12/2016 by Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16-3304. [8] [6781812] [16-3300, 16-3303, 16-3304] (Garlough, Jonathan)
09/29/2016	9 7 pg, 355.23 KB	Motion filed by Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16
09/29/2016	10 1 pg, 96.63 KB	Order issued GRANTING motion to extend time to file appellant's brief. 1. The appellants shall file their respective briefs and required short appendices on or before November 10, 2016. 2. The appellee shall file its consolidated brief on or before December 12, 2016. 3. The appellants shall file their respective reply briefs, if any, on or before December 27, 2016. [9]

		CMD [10] [6786834] [16-3300, 16-3303, 16-3304] (FP)
11/03/2016	11 3 pg, 195.44 KB	Circuit Rule 26.1 Disclosure Statement and Appearance filed by Attorney Richard Riley for Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16-3304. [11] [6795341] (L-No; E-Yes; R-No)
11/10/2016	12 71 pg, 2.28 MB	Submitted appellant brief by William J. McKenna for Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16-3304. [12] [6797151] [16-3300, 16-3303, 16-3304] (McKenna, William)
11/10/2016	13 47 pg, 1.01 MB	Submitted Appendix by William J. McKenna for Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16-3304. [13] [6797152] [16-3300,

		16-3303, 16-3304] (McKenna, William)
11/10/2016	14 71 pg, 2.29 MB	Appellant's brief filed by Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16-3304. Paper copies due on 11/21/2016 Electronically Transmitted. [14] [6797231] [16-3300, 16-3303, 16-3304] (AB)
11/10/2016	15 47 pg, 1.01 MB	Filed Appendix by Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16-3304. Paper copies due on 11/21/2016. [15] [6797232] [16-3300, 16-3303, 16-3304] (AB)
11/14/2016	16 3 pg, 109.97 KB	Attorney Jacob Earl Christensen for USA in 16-3300, USA in 16-3303 and USA in 16-3304 terminated and added Attorney(s) Ellen P. DelSole for party(s) Appellee USA, in case 16-3300 Attorney(s) Ellen P. DelSole for party(s) Appellee USA, in case 16-3303 Attorney(s) Ellen P. DelSole for party(s) Appellee

		USA, in case 16-3304 per appearance form. Appearance form filed by Attorney Ellen Page DelSole for Appellee USA in 16-3300, 16-3303, 16-3304. [16] [6797505] (L-Yes; E-Yes; R-Yes) [16-3300, 16-3303, 16-3304]--[Edited 11/14/2016 by AD to reflect the termination and addition of counsel.] (DelSole, Ellen)
11/17/2016	17 41 pg, 231.63 KB	Submitted brief by Maureen A. McGuire, Kathryn D. Kirmayer, Daniel Saphire, and Janet L. Bartelmay for amicus Association of American Railroads. Consent from all parties contained within brief. [17] [6798374] [16-3300, 16-3303, 16-3304] (McGuire, Maureen)
11/17/2016	18 41 pg, 253.67 KB	Amicus brief filed by Amicus Curiae Association of American Railroads by consent. Paper copies due on 11/25/2016 Electronically Transmitted. [18] [6798745] [16-3300] (CO)
11/28/2016	19 7 pg, 69.99 KB	Motion filed by Appellee USA in 16-3300, 16-3303, 16-3304 to extend time to file appellee brief. [19] [6800291] [16-3300, 16-3303, 16-3304] (DelSole, Ellen)

11/29/2016	20 1 pg, 128.49 KB	Order issued GRANTING motion to extend time to file appellee's brief [19] The appellee shall file its consolidated brief due on or before 01/11/2017 for United States of America. Appellants' reply briefs, if any, are due on or before 01/25/2017 for Appellants Wisconsin Central Limited, Illinois Central Railroad Company and Grand Trunk Western Railroad Company. CMD [20] [6800383] [16-3300, 16-3303, 16-3304] (VG)
01/11/2017	21 3 pg, 104.23 KB	Appearance form filed by Attorney Francesca Ugolini (co-counsel) for Appellee USA in 16-3300, 16-3303, 16-3304. [21] [6810726] (L-No; E-Yes; R-No) [16-3300, 16-3303, 16-3304]--[Edited 01/11/2017 by MM to reflect addition of counsel.] (Ugolini, Francesca)
01/11/2017	22 97 pg, 425.34 KB	Submitted appellee brief by Ellen Page DelSole for Appellee USA in 16-3300, 16-3303, 16-3304. [22] [6810759] [16-3300, 16-3303, 16-3304] (DelSole, Ellen)
01/11/2017	23 97 pg, 502.23 KB	Appellee's brief filed by Appellee USA in 16-3300, 16-3303, 16-3304. Paper copies due on 01/19/2017 Electronically

		Transmitted. [23] [6811081] [16-3300, 16-3303, 16-3304] (CO)
01/18/2017	24 2 pg, 87.95 KB	Notice to the District Court to transmit the record on appeal. [24] [6812370] [16-3300, 16-3303, 16-3304] (RS)
01/18/2017	25 295 pg, 6.01 MB	Original record on appeal filed electronically. Contents of record : 1 vol. of pleadings. [25] [6812572] [16-3304] (NR)
01/23/2017	26 1285 pg, 41.71 MB	Original record on appeal filed electronically. Contents of record : 3 vol. of pleadings. [26] [6813279] [16-3300] (SK)
01/25/2017	27 21 pg, 193.79 KB	Submitted appellant reply brief by William J. McKenna for Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16-3304. [27] [6814244] [16-3300, 16-3303, 16-3304] (McKenna, William)
01/25/2017	28 21 pg, 108.96 KB	Appellant's reply brief filed by Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16-3304. Paper cop-

		ies due on 02/02/2017 Electronically Transmitted. [28] [6814263] [16-3300, 16-3303, 16-3304] (RS)
02/08/2017	29 2 pg, 93.58 KB	Brief deficiency letter sent to Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16-3304. The Appellant Reply brief was electronically filed on 01/25/2017. The paper copies of this brief were due to be submitted to the Clerk's Office by 02/02/2017. The paper copies have not been received by this court. Paper copies due on 02/15/2017 or the court may issue a Rule of Show Cause order pursuant to Circuit Rule 31. [29] [6817233] [16-3300, 16-3303, 16-3304] (FI)
02/13/2017	30 4 pg, 138.25 KB	Argument set for Thursday, March 30, 2017, at 9:30 a.m. in the Main Courtroom, Room 2721. Each side limited to 15 minutes. [30] [6818243] [16-3300, 16-3303, 16-3304] (RS)
02/14/2017	31 1 pg, 247.03 KB	Received argument confirmation from Ellen Page DelSole for Appellee USA in 16-3300, 16-3303, 16-3304. [31] [6818753]

		[16-3300, 16-3303, 16-3304] (DelSole, Ellen)
03/16/2017	32 15 pg, 1.26 MB	Motion filed by Appellee USA in 16-3300, 16-3303, 16-3304 to extend time to file appellee brief. [19] [6800291] [16-3300, 16-3303, 16-3304] (DelSole, Ellen)
03/21/2017	33 1 pg, 36.75 KB	Received argument confirmation from Richard F. Riley Jr. for Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16-3304. [33] [6827550] [16-3300, 16-3303, 16-3304] (Riley, Richard)
03/29/2017	34 2 pg, 91.58 KB	Argument reset for Thursday, March 30, 2017 at 9:30 a.m. in the Main Courtroom, Room 2721. Each side limited to 10 minutes. [34] [6829546] [16-3300, 16-3303, 16-3304] (RS)
03/30/2017	35	Case heard and taken under advisement by panel: Richard A. Posner, Circuit Judge; Daniel A. Manion, Circuit Judge and David F. Hamilton, Circuit Judge. [35] [6829940] [16-3303, 16-3300, 16-3304] (RS)
03/30/2017	36	Case argued by Mr. Richard F. Riley, Jr. for Appellant Illinois

		Central Railroad Company and Mrs. Ellen P. DelSole for Appellee USA in 16-3303, Mr. Richard F. Riley, Jr. for Appellant Wisconsin Central Limited and Mrs. Ellen P. DelSole for Appellee USA in 16-3300, Mr. Richard F. Riley, Jr. for Appellant Grand Trunk Western Railroad Company and Mrs. Ellen P. DelSole for Appellee USA in 16-3304. [36] [6829941] [16-3303, 16-3300, 16-3304] (RS)
05/08/2017	37 12 pg, 174.62 KB	Filed opinion of the court by Judge Posner. AFFIRMED. Richard A. Posner, Circuit Judge; Daniel A. Manion, Circuit Judge, dissenting and David F. Hamilton, Circuit Judge. [37] [6839515] [16-3300, 16-3303, 16-3304] (AP)
05/08/2017	38 1 pg, 88.52 KB	ORDER: Final judgment filed per opinion. With costs: yes. [38] [6839518] [16-3300, 16-3303, 16-3304] (AP)
05/19/2017	39 4 pg, 75.76 KB	Filed Bill of Costs by Appellee USA in 16-3300, 16-3303, 16-3304 in the amount of $101.85. [39] [6842329] [16-3300, 16-3303, 16-3304] (DelSole, Ellen)

06/22/2017	40 0 pg, 0 KB	Submitted petition for rehearing enbanc by William J. McKenna for Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16-3304. [40] NOTE: Access to this entry is limited to counsel of record. Once the document is approved by the court, it will be filed onto the court's docket as a separate entry which will be open to the public. [6849633] [16-3300, 16-3303, 16-3304] (McKenna, William)
06/22/2017	41 22 pg, 181.68 KB	Filed Petition for Rehearing and Petition for Rehearing Enbanc by Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16-3304. Paper copies due on 06/26/2017 [41] [6849699] [16-3300, 16-3303, 16-3304] (GW)
07/12/2017	42 1 pg, 66.06 KB	ORDER: Appellant Wisconsin Central Limited in 16-3300, Appellant Illinois Central Railroad Company in 16-3303, Appellant Grand Trunk Western Railroad Company in 16-3304 Petition for

		Rehearing and Petition for Rehearing Enbanc is DENIED. * Circuit Judge Daniel A. Manion voted to grant the petition for rehearing. For the reasons stated in my dissent from the panel opinion and in the Railroads' petition for rehearing, I would grant the petition. In my opinion, the panel's majority opinion creates an intra-circuit conflict over the proper method of statutory interpretation. This case is thus worthy of another look. [42] [6853578] [16-3300, 16-3303, 16-3304] (AD)
07/20/2017	43 4 pg, 180.04 KB	Mandate issued with bill of costs in the amount of $101.85. No record to be returned. [43] [6855450] [16-3300, 16-3303, 16-3304] (CR)
07/20/2017	____ 18 pg, 637.28 KB	FOR COURT USE ONLY: Certified copy of 05/08/2017 Opinion and Judgment and 07/12/2017 Certified Petition for Rehearing Denial Order with Mandate and Bill of Costs sent to the District Court Clerk. [6855460-2] [6855460] [16-3300, 16-3303, 16-3304] (CR)
10/11/2017	44 1 pg, 55.14 KB	Filed notice from the Supreme Court of the filing of a Petition for Writ of Certiorari. 17-530

		[44] [6875620] [16-3300, 16-3303, 16-3304] (CAG)
01/16/2018	45 1 pg, 64.42 KB	Filed order from the Supreme Court GRANTING the Petition for Writ of Certiorari. 17-530. [45] [6896751] [16-3300, 16-3303, 16-3304] (CAG)

United States District Court
Northern District of Illinois - CM/ECF LIVE, Ver 6.2.1 (Chicago)
CIVIL DOCKET FOR CASE #: 1:14-cv-10243

Wisconsin Central Ltd. v. United States of America	Date Filed: 12/22/2014
Assigned to: Honorable Gary Feinerman	Date Terminated: 07/08/2016
Case in other court: 16-03300	Jury Demand: None
Cause: 26:7422 IRS: Refund Taxes	Nature of Suit: 870 Tax Suit: Taxes
	Jurisdiction: U.S. Government Defendant

Plaintiff

Wisconsin Central Ltd.	represented by **William J. McKenna, Jr.** Foley & Lardner 321 North Clark Street Suite 2800 Chicago, IL 60654 (312)832-4500 Email: wmckenna@foley.com *LEAD ATTORNEY* *ATTORNEY TO BE NOTICED*

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TERMINATED: 06/05/2015

V.

Defendant

United States of America

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/22/2014	1	COMPLAINT filed by Wisconsin Central Ltd.; Filing fee $ 400, receipt number 0752-10177308. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit, # 12 Exhibit, # 13 Exhibit, # 14 Exhibit, # 15 Civil Cover Sheet) (McKenna, William) (Entered: 12/22/2014)
12/22/2014	2	ATTORNEY Appearance for Plaintiff Wisconsin Central Ltd. by William J. McKenna, Jr (McKenna, William) (Entered: 12/22/2014)
12/22/2014	3	NOTIFICATION of Affiliates pursuant to Local Rule 3.2 by Wisconsin Central Ltd. re complaint, 1

		(McKenna, William) (Entered: 12/22/2014)
12/22/2014	4	ATTORNEY Appearance for Plaintiff Wisconsin Central Ltd. by Katherine Davis Spitz (Spitz, Katherine) (Entered: 12/22/2014)
12/22/2014		CASE ASSIGNED to the Honorable Gary Feinerman. Designated as Magistrate Judge the Honorable Jeffrey T. Gilbert. (sm,) (Entered: 12/22/2014)
12/23/2014		SUMMONS Issued as to U.S. Attorney (pg,) (Entered: 12/23/2014)
12/23/2014	5	MINUTE entry before the Honorable Gary Feinerman: Initial status hearing set for 2/19/2015 at 9:00 a.m. Initial Status Report shall be filed by 2/12/2015. Please see Judge Feinerman's web page (http://www.ilnd.uscourts.gov, to "District Judges," to "Judge Gary Feinerman," to "Initial Status Hearings" under Case Management Procedures) for details on the initial status hearing and Initial Status Report. Mailed notice. (jlj,) (Entered: 12/23/2014)
01/13/2015	6	SUMMONS Returned Executed by Wisconsin Central Ltd. as to United States of America served on 12/31/2014, answer due 3/01/2015 (Spitz, Katherine)

		(Docket text modified on 1/15/2015 by Clerk's Office.) (tlm). (Entered: 01/13/2015)
01/21/2015	7	DESIGNATION of Prashant Kolluri as U.S. Attorney for Defendant United States of America (Kolluri, Prashant) (Entered: 01/21/2015)
02/05/2015	8	ATTORNEY Appearance for Defendant United States of America by Noreene C. Stehlik (Stehlik, Noreene) (Entered: 02/05/2015)
02/06/2015	9	MOTION by Plaintiff Wisconsin Central Ltd. to reassign case *pursuant to Local Rule 40.4* (Spitz, Katherine) (Entered: 02/06/2015)
02/06/2015	10	NOTICE of Motion by Katherine Davis Spitz for presentment of motion to reassign case 9 before Honorable Gary Feinerman on 2/12/2015 at 09:00 AM. (Spitz, Katherine) (Entered: 02/06/2015)
02/10/2015	11	MINUTE entry before the Honorable Gary Feinerman: The 2/12/2015 motion hearing 9 is stricken and reset for 2/12/2015 at 9:15 a.m. TIME CHANGE ONLY. Mailed notice (lcw,) (Entered: 02/10/2015)
02/12/2015	12	MINUTE entry before the Honorable Gary Feinerman: Motion hear-

		ing held. Plaintiffs motion to reassign 9 is granted. In all three cases, Defendant shall answer or otherwise plead to the complaint by 4/2/2015. The court, with the concurrence of Judges Gettleman and Kennelly, recommends to the Executive Committee that Grand Trunk W. R.R. Co. v. United States, No. 14 C 10244 (Gettleman, J.), and Ill. Cent. R.R. Co. v. United States, No. 14 C 10246 (Kennelly, J.), be reassigned to Judge Feinerman's calendar. The 2/19/2015 status hearing 5 is stricken. Status hearing in all three cases is set for 4/14/2015 at 9:00 a.m. The parties in all three cases shall file a joint status report by 4/9/2015. Mailed notice (lcw,) (Entered: 02/12/2015)
04/02/2015	13	ANSWER to Complaint by United States of America(Stehlik, Noreene) (Entered: 04/02/2015)
04/09/2015	14	STATUS Report by Wisconsin Central Ltd. (McKenna, William) (Entered: 04/09/2015)
04/10/2015	15	MINUTE entry before the Honorable Gary Feinerman: The 4/14/2015 status hearing 12 is reset from 9:00 to 9:15. TIME CHANGE ONLY. Mailed notice. (lcw,) (Entered: 04/10/2015)

04/14/2015	16	MINUTE entry before the Honorable Gary Feinerman: Status hearing held and continued to 6/16/2015 at 9:00 a.m. Discovery shall be completed by 8/31/2015. Dispositive motions shall be filed by 9/28/2015. Mailed notice. (jlj,) (Entered: 04/15/2015)
06/05/2015	17	WITHDRAWING *Katherine D. Spitz* as counsel for Plaintiff Wisconsin Central Ltd. and substituting William J. McKenna, Jr as counsel of record (McKenna, William) (Entered: 06/05/2015)
06/16/2015	18	MINUTE entry before the Honorable Gary Feinerman: Status hearing held and continued to 8/20/2015 at 9:00 a.m. The parties reported on the progress of discovery. Mailed notice. (jlj,) (Entered: 06/16/2015)
08/20/2015	19	MINUTE entry before the Honorable Gary Feinerman: Status hearing held. At the parties' request, the 9/28/2015 dispositive motion deadline is vacated. In 14 C 10243, 14 C 10244, and 14 C 10246, Plaintiffs shall file a consolidated summary judgment motion by 10/28/2015; Defendant shall respond and file a cross-motion for summary judgment by 11/18/2015; Plaintiffs shall reply in support of

		their motion and respond to Defendant's motion by 12/2/2015; and Defendant shall reply in support of its motion by 12/16/2015. Status hearing set for 10/21/2015 at 9:00 a.m. If the parties agree that the 10/21/2015 hearing is unnecessary and should be re-set for mid-January, they should contact the Courtroom Deputy. Mailed notice (np,) (Entered: 08/20/2015)
10/22/2015	20	MINUTE entry before the Honorable Gary Feinerman: Status hearing held and continued to 1/21/2016 at 9:00 a.m. For the forthcoming summary judgment motions, the parties may file oversized principal briefs of up to 20 pages. Mailed notice, (jlj,) (Entered: 10/22/2015)
10/27/2015	21	RULE 56.1 Statement *Stipulations of Fact* (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27

		Exhibit 27, # 28 Exhibit 28, # 29 Exhibit 29, # 30 Exhibit 30, # 31 Exhibit 31, # 32 Exhibit 32, # 33 Exhibit 33, # 34 Exhibit 34, # 35 Exhibit 35, # 36 Exhibit 36, # 37 Exhibit 37, # 38 Exhibit 38, # 39 Exhibit 39, # 40 Exhibit 40, # 41 Exhibit 41, # 42 Exhibit 42, # 43 Exhibit 43, # 44 Exhibit 44, # 45 Exhibit 45) (McKenna, William) (Entered: 10/27/2015)
10/27/2015	22	RULE 56.1 Statement *Stipulations of Fact PREVIOUSLY FILED as document 21* (Attachments: # 1 Exhibit 46, # 2 Exhibit 47, # 3 Exhibit 48, # 4 Exhibit 49, # 5 Exhibit 50, # 6 Exhibit 51, # 7 Exhibit 52, # 8 Exhibit 53, # 9 Exhibit 54, # 10 Exhibit 55, # 11 Exhibit 56, # 12 Exhibit 57, # 13 Exhibit 58, # 14 Exhibit 59, # 15 Exhibit 60, # 16 Exhibit 61, # 17 Exhibit 62, # 18 Exhibit 63, # 19 Exhibit 64, # 20 Exhibit 65, # 21 Exhibit 66, # 22 Exhibit 67, # 23 Exhibit 68, # 24 Exhibit 69, # 25 Exhibit 70, # 26 Exhibit 71, # 27 Exhibit 72, # 28 Exhibit 73, # 29 Exhibit 74, # 30 Exhibit 75, # 31 Exhibit 76, # 32 Exhibit 77, # 33 Exhibit 78, # 34 Exhibit 79, # 35 Exhibit 80, # 36 Exhibit 81, # 37 Exhibit 82, # 38 Exhibit 83, # 39 Ex-

		hibit 84, # 40 Exhibit 85, # 41 Exhibit 86, # 42 Exhibit 87, # 43 Exhibit 88, # 44 Exhibit 89, # 45 Exhibit 90, # 46 Exhibit 91, # 47 Exhibit 92, # 48 Exhibit 93, # 49 Exhibit 94, # 50 Exhibit 95) (McKenna, William) (Entered: 10/27/2015)
10/28/2015	23	MOTION by Plaintiff Wisconsin Central Ltd. for summary judgment (McKenna, William) (Entered: 10/28/2015)
10/28/2015	24	MEMORANDUM by Wisconsin Central Ltd. in support of motion for summary judgment 23 (McKenna, William) (Entered: 10/28/2015)
11/18/2015	25	MOTION by Defendant United States of America for summary judgment (Stehlik, Noreene) (Entered: 11/18/2015)
11/18/2015	26	MEMORANDUM by Defendant United States of America in support of it's motion for summary judgment and in opposition to plaintiffs' motion for summary judgment (Stehlik, Noreene) (Docket text modified by Clerk's office on 11/20/2015) (sj,). (Entered: 11/18/2015)
12/02/2015	27	REPLY by Plaintiff Wisconsin Central Ltd. *Memorandum in*

		Support of Plaintiffs' Motion for Summary Judgment and Memorandum in Opposition to Defendant's Motion for Summary Judgment (McKenna, William) (Entered: 12/02/2015)
12/16/2015	28	REPLY by United States of America to reply 27, MOTION by Defendant United States of America for summary judgment 25 (Stehlik, Noreene) (Entered: 12/16/2015)
01/19/2016	29	MINUTE entry before the Honorable Gary Feinerman: The court will have questions regarding the pending summary judgment motions. Mailed notice. (jlj,) (Entered: 01/19/2016)
01/21/2016	30	MINUTE entry before the Honorable Gary Feinerman: Status hearing held and continued to 3/15/2016 at 9:00 a.m. Oral argument held on the pending cross-motions for summary judgment. Mailed notice. (jlj,) (Entered: 01/22/2016)
03/11/2016	31	MINUTE entry before the Honorable Gary Feinerman: Status hearing set for 3/15/2016 30 is stricken and re-set for 4/21/2016 at 9:00 a.m. Mailed notice. (jlj,) (Entered: 03/11/2016)

04/15/2016	32	MINUTE entry before the Honorable Gary Feinerman: Status hearing set for 4/21/2016 31 is stricken and re-set for 5/25/2016 at 9:00 a.m. Mailed notice. (jlj,) (Entered: 04/15/2016)
05/20/2016	33	MINUTE entry before the Honorable Gary Feinerman: Status hearing set for 5/25/2016 32 is stricken and re-set for 6/28/2016 at 9:00 a.m. Mailed notice. (jlj,) (Entered: 05/20/2016)
06/24/2016	34	MINUTE entry before the Honorable Gary Feinerman: Status hearing set for 6/28/2016 35 is stricken and re-set for 7/20/2016 at 9:00 a.m. Mailed notice. (jlj,) (Entered: 06/24/2016)
07/06/2016	35	SUPPLEMENT to motion for summary judgment 25, reply to response to motion 28 *Notice of supplemental authority* (Attachments: # 1 Exhibit Union Pacific RR Co opinion) (Stehlik, Noreene) (Entered: 07/06/2016)
07/08/2016	36	MINUTE entry before the Honorable Gary Feinerman: For the reasons set forth in the accompanying Memorandum Opinion and Order, Plaintiff's summary judgment motion 23 is denied, and Defendant's summary judgment motion 25 is granted. Enter judgment order.

		Status hearing set for 7/20/2016 34 is stricken. Civil case closed. Mailed notice. (jlj,) (Entered: 07/08/2016)
07/08/2016	37	MEMORANDUM Opinion and Order Written by the Honorable Gary Feinerman on 7/8/2016. Mailed notice.(jlj,) (Entered: 07/08/2016)
07/08/2016	38	ENTERED JUDGMENT on 7/8/2016. Mailed notice.(jlj,) (Entered: 07/08/2016)
08/29/2016	39	NOTICE of appeal by Wisconsin Central Ltd. regarding orders 38 Filing fee $ 505, receipt number 0752-12305466. (McKenna, William) (Entered: 08/29/2016)
08/29/2016	40	NOTICE of Appeal Due letter sent to counsel of record regarding notice of appeal 39 (ek,) (Entered: 08/29/2016)
08/29/2016	41	TRANSMITTED to the 7th Circuit the short record on notice of appeal 39. Notified counsel (ek,) (Entered: 08/29/2016)
08/30/2016	42	ACKNOWLEDGMENT of receipt of short record on appeal regarding notice of appeal 39; USCA Case No. 16-3300. (tt,) (Entered: 08/30/2016)
01/18/2017	43	NOTICE to Transmit Record on Appeal regarding notice of appeal

		39; USCA Case No. 16-3300. (bg,) (Entered: 01/18/2017)
01/19/2017	44	CERTIFIED and transmitted to the USCA for the 7th Circuit the long record on appeal 39 (USCA no. 16-3300) (ek,) (Entered: 01/19/2017)
01/19/2017	45	USCA RECEIVED on 1/19/2017 the long record regarding notice of appeal 39 (ek,) (Entered: 01/19/2017)
07/20/2017	46	MANDATE of USCA dated 7/20/2017 regarding notice of appeal 39; USCA No. 16-03300; No record to be returned. (nsf,) (Entered: 07/20/2017)
07/20/2017	47	CERTIFIED COPY OF USCA JUDGMENT dated 05/08/2017 regarding notice of appeal 39; USCA No. 16-3300. The judgments of the District Court are AFFIRMED, with costs, in accordance with the decision of this court entered on this date. (nsf,) (Entered: 07/20/2017)
07/20/2017	48	CERTIFIED copy of order dated 07/12/2017 from the Seventh Circuit regarding notice of appeal 39; Appellate case no.: 16-3300. On June 22, 2017, plaintiffs-appellants filed a petition for rehearing and rehearing en banc. A majority

		of the judges on the original panel have voted to deny the petition and none of the active judges has requested a vote on whether to rehear the case en banc.* The petition is therefore DENIED. (nsf,) (Entered: 07/20/2017)
07/20/2017	49	CERTIFIED COPY OF OPINION from the USCA for the 7th Circuit; Argued 03/30/2017; Decided 05/08/2017 in USCA case no. 16-3300 (nsf,) (Entered: 07/20/2017)
07/20/2017	50	BILL of Costs from the USCA, appeal no. 16-3300 (nsf,) (Entered: 07/20/2017)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

WISCONSIN CENTRAL LTD.,
Plaintiff,

v.

No. 14-cv-10243
Hon. Gary Feinerman

UNITED STATES OF AMERICA,
Defendant.

GRAND TRUNK WESTERN RAILROAD COMPANY,
Plaintiff,

v.

No. 14-cv-10244
Hon. Gary Feinerman

UNITED STATES OF AMERICA,
Defendant.

ILLINOIS CENTRAL RAILROAD COMPANY,
Plaintiff,

v.

No. 14-cv-10246
Hon. Gary Feinerman

UNITED STATES OF AMERICA,
Defendant.

STIPULATIONS OF FACT

The Plaintiffs in these three actions, which have been assigned or reassigned to Judge Feinerman and are being heard together as related cases under Local Rule 40.4, to wit:

Wisconsin Central Ltd. ("WCL"),

Grand Trunk Western Railroad Company ("GTW"), and

Illinois Central Railroad Company ("ICRR," and collectively with WCL and GTW, "Plaintiffs"),

and the Defendant, the United States of America ("United States" or "Defendant"), by undersigned counsel, hereby stipulate and agree as follows.

The statements of fact recited herein shall be considered true and correct. The exhibits and other documents referenced herein or attached hereto shall be considered authentic, true and correct copies of the original documents. The Court may rely on these statements and exhibits for purposes of any dispositive motions in these actions. All exhibits docketed in these actions or accompanying these stipulations are redacted as required in Fed. R. Civ. P. 5.2.

Nature of Case; Jurisdiction; Venue; Plaintiffs

1. These cases are actions for refund of federal employment taxes paid by each Plaintiff on its own behalf, and withheld by each Plaintiff from its employees and paid over to the Internal Revenue Service on their behalf, pursuant to the Railroad Retirement Tax Act ("RRTA"), 26 U.S.C. ("Internal Revenue Code" or "I.R.C.") §§ 3201 – 3241.

2. The primary issue in these cases is whether the income of certain employees in the form of corporate stock in Plaintiffs' publicly traded parent company, received by those employees at the time they exercised stock options previously granted to them in connection with their employment, is a form of "money remuneration" within the meaning of I.R.C. § 3231(e)(1), or whether instead it is excluded from the definition of "compensation" subject to tax under the RRTA pursuant to I.R.C. § 3231(e)(1).

3. The tax years (calendar years in each case) at issue for each Plaintiff are as follows:

   WCL: 2007 through 2011, and 2013.

   GTW: 2006 through 2012.

   ICRR: 2006 through 2013.

4. This Court has subject matter jurisdiction over these actions pursuant to 28 U.S.C. § 1346(a)(1).

5. Venue in these actions is proper in the United States District Court for the Northern District of Illinois pursuant to 28 U.S.C. § 1402(a)(2).

6. Each Plaintiff, and each predecessor corporation of each Plaintiff as identified in paragraphs 12-13 and 17 below, is (or was while it existed) a railroad "carrier" within the meaning of I.R.C. § 3231(g). Accordingly, each such corporation is a railroad "employer" within the meaning of I.R.C. § 3231(a), and each such corporation and its employees are liable for Railroad Retirement taxes imposed by the RRTA.

7. RRTA taxes are the payroll taxes paid by railroad employers and employees in lieu of the Social Security payroll taxes under the Federal Insurance Contributions Act ("FICA"), I.R.C. §§ 3101 – 3128, that are paid by non-rail employers and employees.

8. Plaintiffs are operating railroad companies with significant railroad operations in the Midwest and the Mississippi Valley throughout the years at issue in these actions (and continuing today).

9. Each Plaintiff, and each predecessor corporation of each Plaintiff as identified in paragraphs 12-13 and 17 below, is (or was while it existed during the years at issue) an indirect wholly owned subsidiary of Canadian National Railway Company ("CN"), a Canadian corporation whose shares are publicly traded on the New York Stock Exchange and the Toronto Stock Exchange. CN is an operating railroad company with transcontinental railroad operations throughout Canada.

WCL – Corporate Identity and Predecessor Corporations

10. Plaintiff WCL is a Delaware corporation with its principal place of business at 17641 S. Ashland Avenue, Homewood, Illinois 60430.

11. Plaintiff WCL is the successor in interest by merger to two corporations, identified in paragraphs 12-13 below, that filed certain of the tax returns and refund claims at issue in Docket No. 14-CV-10243.

12. A corporation named "Wisconsin Central Ltd." filed the tax returns and refund claims at issue

in Docket No. 14-CV-10243 for the 2007, 2008 and 2009 tax years. "Wisconsin Central Ltd." was merged into another corporation, effective March 31, 2013, that was immediately renamed Wisconsin Central Ltd. The latter corporation is the current Plaintiff in Docket No. 14-CV-10243 and is the successor in interest to the "Wisconsin Central Ltd." claims for 2007, 2008 and 2009.

13. A corporation named Duluth, Winnipeg and Pacific Railway Company ("DWP") filed the tax returns and refund claims at issue in Docket No. 14-CV-10243 for the 2010 and 2011 tax years. DWP was merged into the corporation named "Wisconsin Central Ltd.," described in paragraph 12 above, effective December 31, 2011. The latter corporation, successor by merger to DWP, was merged into another corporation, effective March 31, 2013, that was immediately renamed Wisconsin Central Ltd., as described in paragraph 12 above. The latter corporation is the current Plaintiff in Docket No. 14-CV-10243 and is the successor in interest to the DWP claims for 2010 and 2011.

14. Plaintiff WCL (the corporation currently existing) filed the tax return and refund claim at issue in Docket No. 14-CV-10243 for the 2013 tax year.

15. Accordingly, Plaintiff WCL is now responsible for all refund claims at issue in Docket No. 14-CV-10243, for all tax years 2007 through 2011 and tax year 2013, for itself and its predecessor corporations identified in paragraphs 12-13. References to "WCL" in these stipulations in-

clude WCL's predecessor corporations with respect to the 2007, 2008, 2009, 2010 and 2011 tax years.

GTW – Corporate Identity and Predecessor Corporation

16. Plaintiff GTW is a Michigan corporation with its principal place of business at 17641 S. Ashland Avenue, Homewood, Illinois 60430.

17. A corporation named "Grand Trunk Western Railroad Incorporated" filed the tax returns and the refund claims at issue in Docket No. 14-CV-10244 with respect to the 2006 and 2007 tax years. It was merged into another corporation effective August 31, 2008, which was immediately renamed "Grand Trunk Western Railroad Company." The latter corporation is the current Plaintiff in Docket No. 14-CV-10244 and is the successor in interest to the "Grand Trunk Western Railroad Incorporated" claims for 2006 and 2007.

18. Plaintiff GTW (the corporation currently existing) filed the tax returns and refund claims at issue in Docket No. 14-CV-10244 for the 2008, 2009, 2010, 2011 and 2012 tax years.

19. Accordingly, Plaintiff GTW is now responsible for all refund claims at issue in Docket No. 14-CV-10244, for all tax years 2006 through 2012, for itself and its predecessor corporation identified in paragraph 17. References to "GTW" in these stipulations include GTW's predecessor corporation with respect to the 2006 and 2007 tax years.

ICRR – Corporate Identity

20. Plaintiff ICRR is an Illinois corporation with its principal place of business at 17641 S. Ashland Avenue, Homewood, Illinois 60430.

21. Plaintiff ICRR filed the tax returns and refund claims at issue in Docket No. 14-CV-10246 for all tax years 2006 through 2013.

Stock Options – Overview

22. The CN stock options that were granted to certain employees of each Plaintiff, that were exercised during the years in issue (2006-2013) and that have given rise to the claims in these cases, were "nonqualified" stock options, sometimes referred to as NQSOs. In other words, the stock options at issue in these actions were not incentive stock options as defined in I.R.C. § 422(b) and were not part of an employee stock purchase plan as defined in I.R.C. § 423(b), and thus were not "qualified stock options" described in I.R.C. § 3231(e)(12).

23. The CN stock options at issue in these cases were generally issued and exercised as follows during the years in issue.

    a. The CN Board of Directors or a committee thereof determined which employees and non-employee directors of CN and its affiliates (including the Plaintiffs) would be granted nonqualified stock options to purchase shares of CN stock through CN's stock transfer agent (that is, the shares were "treasury shares," not previously issued shares), and the number of options each person would receive. The options had a 10-year term; that is, they had to be exercised

by the recipient within 10 years after issuance or they expired. Each option gave the employee the right to purchase one share of CN stock at a fixed exercise price equal to CN's publicly traded stock price as of the option grant date ("exercise price").

b. To exercise an option on a date of the optionee's choosing during the 10-year term, the employee communicated to CN's transfer agent the number of options that the employee wished to exercise. The exercise could occur in one of three ways chosen by the employee:

i. First method: the employee could send a cash payment for the exercise price of the CN shares being acquired plus tax withholdings and administrative costs, and all the CN shares being acquired would be transferred to the employee's personal brokerage account to be held as a stock investment by the employee (cash exercise). The current form submitted by an employee to elect a cash exercise is attached as Exhibit 76 (CN000721).

ii. Second method: the employee could request that the transfer agent sell enough of the CN shares being acquired to cover the exercise price of the shares, broker commissions, tax withholdings and administrative costs, and the remaining CN shares being acquired would be transferred to the employee's personal brokerage account to be held as a stock investment by the employee

(sell-to-cover exercise). The current form submitted by an employee to elect a sell-to-cover exercise is attached as Exhibit 77 (CN000722).

iii. Third method: the employee could request that the transfer agent sell the CN shares being acquired, and the cash proceeds of the sale of shares, net of the exercise price of the shares, broker commissions, tax withholdings and administrative costs, would be wired to the employee's bank account (cashless exercise). The current form submitted by an employee to elect a cashless exercise is attached as Exhibit 78 (CN000723).

iv. For the avoidance of doubt, the phrase "the related Plan" in the signature sections of Exhibits 76, 77 and 78 described in subparagraphs (i), (ii) and (iii) above refers to the CN Management Long Term Incentive Plan itself, and not any other or separate plan.

c. In all cases, and regardless of the exercise method chosen by the employee, each Plaintiff treated optionees who were U.S. citizens or residents, including the employees whose options are at issue in these cases, as receiving income for federal income tax purposes, and "compensation" for RRTA purposes, in the amount by which the publicly traded share price on the date of exercise exceeded the exercise price for each option exercised (the "spread on exercise").

24. Attached as Exhibit 24 (CN000302-305) are flowcharts describing in more detail the option issuance and exercise processes for nonqualified CN stock options granted to U.S. employees of CN and its affiliates, including the cash, sell-to-cover and cashless exercise alternatives. These flowcharts reflect the current (2015) processes, which were generally the same during the years at issue (2006-2013).

25. Some of the options at issue in these cases were "performance" options, meaning they were exercisable only upon CN's attainment of certain financial performance benchmarks in a given year, and were otherwise exercisable in accordance with the exercise procedures described in paragraph 23b above. Options that were not performance options were "conventional" options, meaning they were exercisable as described in paragraph 23b above without regard to any corporate financial performance criteria. Exhibit 16 (CN000191) (CN Intranet page describing "performance" and "conventional" options). Aspects of performance versus conventional options at issue in these cases are as follows:

    a. All options granted in 1999 and 2003 were performance options. The financial benchmarks for the exercise of the performance options granted in 1999 and 2003 are described in the Long Term Incentive Award Agreements for those years respectively, attached as Exhibit 92 (CN000773-776) and Exhibit 82 (CN000732-734).

b. Vesting of the 1999 options was entirely contingent on attainment of the performance criteria: "If any of the options do not vest because one or both of the performance criteria are not met by the fourth anniversary of the grant, they expire immediately." Exhibit 92 (CN000774). In contrast, the 2003 options became immediately exercisable on their sixth anniversary if they were not exercisable earlier based on attainment of the performance criteria, see Exhibit 82 (CN000733); i.e. they were "performance accelerated."

c. The performance options granted in 1999 and 2003 made up approximately 27% of the options exercised during the years in issue (2006-2013). The remaining approximately 73% of the options exercised during the years in issue were conventional options.

d. The option spreadsheet described in paragraph 27 below, and attached as Exhibit 75 (CN000599-720), identifies the specific options exercised by a given employee in a given year as either performance or conventional. In such spreadsheet, the 1999 options are identified as "performance vested," and the 2003 options are identified as "perf accelerated vested."

e. Under a version of CN's stock option plan effective November 28, 1995 (see Exhibit 2 (CN000013-19)), two-thirds of the options issued under such plan were performance options and one-third were conventional options. No options exercised during

the years at issue in these cases (2006-2013) were issued under such 1995 plan. The two-thirds-performance-one-third-conventional split was eliminated in the version of the stock option plan effective May 7, 1996 (Exhibit 1 (CN000001-12)), which is the version of the stock option plan, as subsequently amended from time to time, under which all the options exercised during the years at issue in these cases were issued. Accordingly, the only performance options at issue in these cases were the performance options issued in 1999 and 2003, as described in subparagraphs (a) and (b) above.

26. Other stipulated aspects of the CN stock options and stock option program are as follows:

a. Except for the stock options granted to employees of Plaintiff ICRR in 1996 through 1998 (see paragraph 29.c below), the stock options at issue in these actions were awarded to employees under the Canadian National Railway Company Management Long-Term Incentive Plan ("CN Management Long-Term Incentive Plan" or "Plan"). Such plan has been in effect for CN and its subsidiaries since May 7, 1996 and remains in effect, as amended, today. Versions of the Plan as in effect during the years in issue are attached hereto as the Exhibits described in paragraph 29 and its subparagraphs, below.

b. The Plan was designed to attract and retain the services of selected employees who were in a position to make a material contribution to the success of the business.

See Exhibit 1 (CN000001), Exhibit 11 (CN000123).

c. A company newsletter published in 2000 describing the Plan states that stock options under the Plan are generally granted to executives, senior management and management employees of CN and its affiliates in recognition of the impact of their positions and their contribution to the overall results of the company. See Exhibit 13 (CN000156).

d. The same newsletter states: "Options are unlike salary as they do not come with a value known in advance. The gain from the option is linked to the performance of CN's share." Exhibit 13 (CN000155),

e. The same newsletter states: "CN has awarded stock options under the Management Long Term Incentive Plan since 1996, to encourage managers to create value for CN and shareholders, and to allow them to acquire a financial interest in the Company over time. As a result, more and more of your compensation is linked to results of the Company." Exhibit 13 (CN000155). The same statement is currently (2015) made almost verbatim in the CN Intranet site to describe the stock option plan. *See* Exhibit 16 (CN000191).

f. Despite the ten-year term of the stock options, options generally expire earlier in the event an optionee ceases to be employed by a CN affiliate. If an optionee is dismissed

for cause or voluntarily terminates employment, the options expire immediately. The options of optionees who are no longer employed by a CN affiliate due to retirement or death generally expire either at the end of the option period or within 12 months (death) or 36 months (retirement). See Exhibit 1 (CN000006-8), Exhibit 11 (CN000129-130).

g. Options are awarded primarily to executives and managers, although a small proportion are awarded to rank-and-file employees. See Exhibit 12 (CN000137).

h. Effective March 8, 2005, non-employee directors are not eligible to be awarded stock options under the Plan. Exhibit 1 (CN000005), Exhibit 11 (CN000128).

Spreadsheet of Options Granted and Exercised, Shares Retained and Sold, Etc.

27. Attached hereto as Exhibit 75 (CN000599-720) is a true copy of printouts of a spreadsheet prepared by Plaintiffs in which Plaintiffs set forth numeric and computational details with respect to the stock options exercised during the years in issue in these cases (2006-2013) by the employees of Plaintiffs. The complete spreadsheet has also been provided to Defendant in native Excel format. The spreadsheet includes details such as number of options exercised; specific date of exercise; grant date of options exercised; exercise type (cash exercise, sell-to-cover exercise, or cashless exercise); performance versus conventional options; number of CN shares retained by the employees as a stock

investment; and number of shares sold at the time of exercise, on both a cumulative annual basis and an individual transaction-by-transaction basis. The spreadsheet is a summary of and is based upon the business records of CN made at the time of the transactions described, by a person with knowledge, as part of CN's regular practice of recording its business activities. The United States agrees it has been given an opportunity to examine the underlying business records summarized in this spreadsheet.

28. In paragraph 22 above, the parties stipulate that all the stock options involved in these cases are nonqualified stock options or NQSOs. In four of the total 1,834 option exercises reflected in Exhibit 75, however, employees of WCL during the years in issue exercised incentive stock options (ISOs) that were originally issued as WCL ISOs and had been converted to CN ISOs as of the time of exercise. These four ISO exercises are shown in rows 660, 709, 1311 and 1413 of the spreadsheet entitled "HR Data 06-13" in the Excel version of Exhibit 75. Because the options in these four instances were ISOs and were thus "qualified stock options" described in I.R.C. § 3231(e)(12), those specific options are not at issue in Plaintiffs' motion for summary judgment due to be filed by October 28, 2015.

Stock Option Plans and Related Documents

29. The stock options at issue in these cases were exercised by Plaintiffs' employees during the years in issue (2006-2013) and were granted to the employees during the years 19962012. The

written plans governing such stock options were as follows:

a. At the times when all the options at issue were exercised by Plaintiffs' employees during the years in issue (2006-2013), the Canadian National Railway Company Management Long-Term Incentive Plan ("CN Management Long-Term Incentive Plan") was the written plan governing all such options. Such plan has been in effect for CN and its subsidiaries since May 7, 1996 and remains in effect today. A true copy of such plan in the form in which it existed from March 4, 2008 through all the years in issue is attached as Exhibit 1 (CN000001-12; another copy at CN000096-107).

b. True copies of the written plans governing the stock options at issue in these cases (except for ICRR stock options issue during 1996 through 1998 as described in subparagraph (c) below), reflecting the terms of the plan, as amended from time to time, during the periods when such options were issued and continuing through the date of these stipulations, are attached as follows:

i. Exhibit 2 – Canadian National Railway Company Management Stock Option Plan, effective as of November 28, 1995 (CN000013-19).

ii. Exhibit 3 – Canadian National Railway Company Management Long-Term Incentive Plan, effective as of May

7, 1996 (CN000020-33). This plan replaced Exhibit 2 referenced immediately above, and was the first version of the CN Long-Term Incentive Plan in effect throughout the years in issue.

iii. Exhibit 4 – Canadian National Railway Company Management Long-Term Incentive Plan – January 19, 1999 amendment approval (CN000034-47).

iv. Exhibit 5 – Canadian National Railway Company Management Long-Term Incentive Plan – January 23, 2001 amendment approval (CN000048-56).

v. Exhibit 6 – Canadian National Railway Company Management Long-Term Incentive Plan – January 22, 2002 amendment approval (CN000057-65).

vi. Exhibit 7 – Canadian National Railway Company Management Long-Term Incentive Plan – March 8, 2005 amendment approval (CN000066-74).

vii. Exhibit 8 – Canadian National Railway Company Management Long-Term Incentive Plan – March 6, 2007 amendment approval (CN000075-95).

viii. Exhibit 9 – CN Management Long-Term Incentive Plan – adopted May 7, 1996; as amended through, and effective as of, March 4, 2008 (CN000096-107).

ix. Exhibit 10 – Canadian National Railway Company Management Long-Term Incentive Plan – January

26, 2015 amendment approval (CN000108-122).

x. Exhibit 11 – Canadian National Railway Company Management Long-Term Incentive Plan – as amended on January 27, 2015 (CN000123-135).

c. The shares of Illinois Central Corporation, the holding company of Plaintiff ICRR, were acquired by CN effective June 4, 1998. Some of the stock options exercised by ICRR employees during the years in issue in Docket No. 12-CV-10246 were issued to the employees during the 1996-1998 period, and were converted to CN options upon the acquisition. True copies of the written plans and related documents covering stock options issued by ICRR during the pre-acquisition 1996-1998 period, some of which were exercised during the years in issue, are attached as follows:

i. Exhibit 17 – Illinois Central Railroad Company Executive Performance Compensation Program, adopted November 23, 1993 (CN000197-207).

ii. Exhibit 18 – Illinois Central Corporation 1990 Long Term Incentive Plan – as amended November 29, 1990, April 28, 1992, April 22, 1993 and February 10, 1994 (CN000208-223).

iii. Exhibit 19 – Illinois Central Corporation Form for Directors' Incentive 2000 Option Plan (CN000224-228).

iv. Exhibit 20 – Procedure to Exercise Illinois Central Corporation Options Converted to CN Options (CN000229-232).

v. Exhibit 21 – IC Employees Grant of Options Trust Agreement – January 19, 1999 (CN000233-245).

vi. Exhibit 22 – Conversion of Illinois Central Options – Consent Request Sent to Montreal Stock Exchange (CN000246-288).

30. True copies of the individual Option Agreements provided to and accepted by employees to whom stock options were granted each year, as a condition of their receipt of the options, are attached as follows. These agreements covered both the stock options (NQSOs) involved in these cases and also Restricted Stock Units (RSUs) granted to some employees; RSUs are not involved in these cases. With respect to the agreements for options issued in 2002 and thereafter, the employee's acceptance of the agreement was confirmed by clicking an online link rather than signing the paper agreement. No options at issue in the instant cases were issued by CN in 2004. The latest year in which any of the options at issue in the instant cases were issued is 2012.

a. Exhibit 92 – Long Term Incentive Award Agreement form with respect to stock options issued in 1999 (CN000773-776).

b. Exhibit 79 – Long Term Incentive Award Agreement form with respect to

stock options issued in 2000 (CN000724-726).

c. Exhibit 80 – Long Term Incentive Award Agreement form with respect to stock options issued in 2001 (CN000727-729).

d. Exhibit 81 – Long Term Incentive Award Agreement form with respect to stock options issued in 2002 (CN000730-731).

e. Exhibit 82 – Long Term Incentive Award Agreement form with respect to stock options issued in 2003 (CN000732-734).

f. Exhibit 83 – Long Term Incentive Award Agreement form with respect to stock options issued in 2005 (CN000735-737).

g. Exhibit 84 – Long Term Incentive Award Agreement form with respect to stock options issued in 2006 (CN000738-740).

h. Exhibit 85 – Long Term Incentive Award Agreement form with respect to stock options issued in 2007 (CN000741-743).

i. Exhibit 86 – Long Term Incentive Award Agreement form with respect to stock options issued in 2008 (CN000744-746).

j. Exhibit 87 – Long Term Incentive Award Agreement form with respect to

stock options issued in 2009 (CN000747-749).

k. Exhibit 88 – Long Term Incentive Award Agreement form with respect to stock options issued in 2010 (CN000750-752).

l. Exhibit 89 – Long Term Incentive Award Agreement form with respect to stock options issued in 2011 (CN000753-759).

m. Exhibit 90 – Long Term Incentive Award Agreement form with respect to stock options issued in 2012 (CN000760-766).

31. The version of the CN Management Long Term Incentive Plan dated January 26, 2015 and adopted by the CN Board January 27, 2015 (Exhibits 10 and 11 (CN000108-135)) makes reference (CN000108) to the following additional plans and policies, which are not stock option plans:

a. A Restricted Share Units Plan ("SUP"), of which a copy as adopted in 2004 and amended through January 1, 2011 is attached as Exhibit 93 (CN000777-791).

b. An Annual Incentive Bonus Plan ("AIBP"), of which a copy of the most recently updated summary (January 2012) made available to employees is attached as Exhibit 94 (CN000792-796).

c. A Voluntary Incentive Deferral Plan, of which a copy as adopted in 2002 and

amended through January 1, 2009 is attached as Exhibit 95 (CN000797-807).

32. True copies of CN documents describing various aspects of the stock options at issue in these cases are attached as follows:

a. Exhibit 12 – 2014 annual assumptions analysis for valuing CN stock options, March 28, 2014 (CN000136-154).

b. Exhibit 13 – Communications to Employees: Four newsletters explaining CN Management Long-Term Incentive Plan, issued in 2000, fourth newsletter amended 2004 (CN000155-172).

c. Exhibit 14 – CN Stock Ownership Guidelines for Senior Management Employees (approved 1999, amended 2002, 2004, 2010) (CN000173-174).

d. Exhibit 15 – Exercise and Sell of Options by US Employees – Tax Treatment Memorandum – July 31, 1998 (CN000175-186).

e. Exhibit 16 – Overview and Explanation of CN Management Long-Term Incentive Plan – CN intranet pages, accessed June 8, 2015 (CN000187-196).

f. Exhibit 23 – CN annual shareholders' meeting notices for 1998, 2005 and 2007, including proposed Management Long Term Incentive Plan amendments (CN000289-301).

g. Exhibit 25 – Excerpts from CN public offering prospectus, including description of

original stock option plan (Exhibit 2) (CN000306-316).

h. Exhibit 26 – Internal description of Management Long Term Incentive Plan in 1997 CN proxy statement, from CN Law (CN000317).

i. Exhibit 91 – Communication to employees regarding converted Illinois Central options, September 30, 1998 (CN000767-772).

WCL – 2007 Tax Year

33. On or before February 29, 2008, Plaintiff WCL timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2007, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. WCL paid the employer and employee taxes shown as due on the return. WCL's 2007 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 27 (CN000318-320).

34. On May 12, 2010, by certified mail, within the three-year period provided by I.R.C. § 6511(a), WCL timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by WCL for the year 2007 in the amount of $60,536, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by WCL, and withheld by WCL from

its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) WCL's 2007 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 28 (CN000321-328).

35. On May 14, 2013, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of WCL's claim for refund for tax year 2007. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 29 (CN000329-330).

36. No portion of the refund claimed by WCL for tax year 2007 has been paid to WCL.

37. The Complaint in Docket No. 14-CV-10243 was timely filed by WCL on December 22, 2014 with respect to tax year 2007, pursuant to I.R.C. § 6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

WCL – 2008 Tax Year

38. On or before March 2, 2009, Plaintiff WCL timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2008, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. WCL paid the employer and employee taxes shown as due on the return.

WCL's 2008 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 30 (CN000331-333).

39. On May 12, 2010, by certified mail, within the three-year period provided by I.R.C. § 6511(a), WCL timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by WCL for the year 2008 in the amount of $51,288, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by WCL, and withheld by WCL from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) WCL's 2008 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 31 (CN000334-341).

40. On May 14, 2013, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of WCL's claim for refund for tax year 2008. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 29 (CN000329-330).

41. No portion of the refund claimed by WCL for tax year 2008 has been paid to WCL.

42. The Complaint in Docket No. 14-CV-10243 was timely filed by WCL on December 22, 2014 with respect to tax year 2008, pursuant to I.R.C. § 6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

WCL – 2009 Tax Year

43. On or before February 28, 2010, Plaintiff WCL timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2009, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. WCL paid the employer and employee taxes shown as due on the return. WCL's 2009 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 32 (CN000342-344).

44. On May 12, 2010, by certified mail, within the three-year period provided by I.R.C. § 6511(a), WCL timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by WCL for the year 2009 in the amount of $33,473, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by WCL, and withheld by WCL from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any

refund claims filed by Plaintiffs in these actions.) WCL's 2009 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 33 (CN000345-355).

45. On May 14, 2013, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of WCL's claim for refund for tax year 2009. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 29 (CN000329-330).

46. No portion of the refund claimed by WCL for tax year 2009 has been paid to WCL.

47. The Complaint in Docket No. 14-CV-10243 was timely filed by WCL on December 22, 2014 with respect to tax year 2009, pursuant to I.R.C. § 6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

WCL – 2010 Tax Year

48. On or before February 28, 2011, Plaintiff WCL timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2010, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. WCL paid the employer and employee taxes shown as due on the return. WCL's 2010 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 34 (CN000356-357).

49. On September 26, 2012, by certified mail, within the three-year period provided by I.R.C.

§ 6511(a), WCL timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by WCL for the year 2010 in the amount of $24,527.13, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by WCL, and withheld by WCL from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) WCL's 2010 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 35 (CN000358-366).

50. On December 26, 2012, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of WCL's claim for refund for tax year 2010. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 36 (CN000367-371).

51. No portion of the refund claimed by WCL for tax year 2010 has been paid to WCL.

52. The Complaint in Docket No. 14-CV-10243 was timely filed by WCL on December 22, 2014 with respect to tax year 2010, pursuant to I.R.C. §

6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

WCL – 2011 Tax Year

53. On or before February 29, 2012, Plaintiff WCL timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2011, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. WCL paid the employer and employee taxes shown as due on the return. WCL's 2011 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 37 (CN000372).

54. On September 26, 2012, by certified mail, within the three-year period provided by I.R.C. § 6511(a), WCL timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by WCL for the year 2011 in the amount of $27,226.44, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by WCL, and withheld by WCL from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) WCL's 2011 claim for refund (Form CT-1X) was attached to the Complaint

filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 38 (CN000373-381).

55. On December 26, 2012, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of WCL's claim for refund for tax year 2011. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 36 (CN000367-371).

56. No portion of the refund claimed by WCL for tax year 2011 has been paid to WCL.

57. The Complaint in Docket No. 14-CV-10243 was timely filed by WCL on December 22, 2014 with respect to tax year 2011, pursuant to I.R.C. § 6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

WCL – 2013 Tax Year

58. On or before February 28, 2014, Plaintiff WCL timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2013, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. WCL paid the employer and employee taxes shown as due on the return. WCL's 2013 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 39 (CN000382-384).

59. On June 16, 2014, by certified mail, within the three-year period provided by I.R.C. § 6511(a), WCL timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for

refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by WCL for the year 2013 in the amount of $8,276.92, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by WCL, and withheld by WCL from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) WCL's 2013 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10243, and a true copy is attached hereto as Exhibit 40 (CN000385-394).

60. No portion of the refund claimed by WCL for tax year 2013 has been paid to WCL.

61. More than six months had elapsed after WCL's filing of its refund claim for tax year 2013, without any action or decision by the Internal Revenue Service with respect to such claim, when WCL filed its Complaint in Docket No. 14-CV-10243 on December 22, 2014 with respect to tax year 2013. Pursuant to I.R.C. § 6532(a)(1), WCL's Complaint in Docket No. 14-CV-10243 with respect to tax year 2013 was timely filed.

GTW – Tax Year 2006

62. On or before February 28, 2007, Plaintiff GTW timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxa-

ble year ended December 31, 2006, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. GTW paid the employer and employee taxes shown as due on the return. GTW's 2006 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 41 (CN000395).

63. On February 26, 2010, by certified mail, within the three-year period provided by I.R.C. § 6511(a), GTW timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by GTW for the year 2006 in the amount of $149,334, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by GTW, and withheld by GTW from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) GTW's 2006 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 42 (CN000396-406).

64. On May 14, 2013, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of GTW's claim for refund for tax year 2006. The official notice of claim disallowance was attached to the Complaint filed in

Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 43 (CN000407-408).

65. No portion of the refund claimed by GTW for tax year 2006 has been paid to GTW.

66. The Complaint in Docket No. 14-CV-10244 was timely filed by GTW on December 22, 2014 with respect to tax year 2006, pursuant to I.R.C. § 6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

GTW – 2007 Tax Year

67. On or before February 29, 2008, Plaintiff GTW timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2007, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. GTW paid the employer and employee taxes shown as due on the return. GTW's 2007 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 44 (CN000409-413).

68. On May 12, 2010, by certified mail, within the three-year period provided by I.R.C. § 6511(a), GTW timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by GTW for the year 2007 in the amount of $58,927, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by GTW, and withheld by GTW from

its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) GTW's 2007 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 45 (CN000414-422).

69. On May 14, 2013, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of GTW's claim for refund for tax year 2007. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 43 (CN000407-408).

70. No portion of the refund claimed by GTW for tax year 2007 has been paid to GTW.

71. The Complaint in Docket No. 14-CV-10244 was timely filed by GTW on December 22, 2014 with respect to tax year 2007, pursuant to I.R.C. § 6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

GTW – 2008 Tax Year

72. On or before March 2, 2009, Plaintiff GTW timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2008, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. GTW paid the employer and employee taxes shown as due on the return.

GTW's 2008 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 46 (CN000423).

73. On May 12, 2010, by certified mail, within the three-year period provided by I.R.C. § 6511(a), GTW timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by GTW for the year 2008 in the amount of $76,103, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by GTW, and withheld by GTW from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) GTW's 2008 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 47 (CN000424-432).

74. On May 14, 2013, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of GTW's claim for refund for tax year 2008. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 43 (CN000407-408).

75. No portion of the refund claimed by GTW for tax year 2008 has been paid to GTW.

76. The Complaint in Docket No. 14-CV-10244 was timely filed by GTW on December 22, 2014 with respect to tax year 2008, pursuant to I.R.C. § 6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

GTW – 2009 Tax Year

77. On or before February 28, 2010, Plaintiff GTW timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2009, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. GTW paid the employer and employee taxes shown as due on the return. GTW's 2009 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 48 (CN000433-436).

78. On May 12, 2010, by certified mail, within the three-year period provided by I.R.C. § 6511(a), GTW timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by GTW for the year 2009 in the amount of $57,723, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by GTW, and withheld by GTW from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any

refund claims filed by Plaintiffs in these actions.) GTW's 2009 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 49 (CN000437-448).

79. On May 14, 2013, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of GTW's claim for refund for tax year 2009. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 43 (CN000407-408).

80. No portion of the refund claimed by GTW for tax year 2009 has been paid to GTW.

81. The Complaint in Docket No. 14-CV-10244 was timely filed by GTW on December 22, 2014 with respect to tax year 2009, pursuant to I.R.C. § 6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

GTW – 2010 Tax Year

82. On or before February 28, 2011, Plaintiff GTW timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2010, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. GTW paid the employer and employee taxes shown as due on the return. GTW's 2010 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 50 (CN000449-450).

83. On September 26, 2012, by certified mail, within the three-year period provided by I.R.C.

§ 6511(a), GTW timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by GTW for the year 2010 in the amount of $74,431.07, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by GTW, and withheld by GTW from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) GTW's 2010 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 51 (CN000451-459).

84. On December 27, 2012, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of GTW's claim for refund for tax year 2010. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 52 (CN000460-464).

85. No portion of the refund claimed by GTW for tax year 2010 has been paid to GTW.

86. The Complaint in Docket No. 14-CV-10244 was timely filed by GTW on December 22, 2014 with respect to tax year 2010, pursuant to I.R.C. §

6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

GTW – 2011 Tax Year

87. On or before February 29, 2012, Plaintiff GTW timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2011, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. GTW paid the employer and employee taxes shown as due on the return. GTW's 2011 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 53 (CN000465).

88. On September 26, 2012, by certified mail, within the three-year period provided by I.R.C. § 6511(a), GTW timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by GTW for the year 2011 in the amount of $48,718.69, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by GTW, and withheld by GTW from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) GTW's 2011 claim for refund (Form CT-1X) was attached to the Complaint

filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 54 (CN000466-474).

89. On December 27, 2012, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of GTW's claim for refund for tax year 2011. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 52 (CN000460-464).

90. No portion of the refund claimed by GTW for tax year 2011 has been paid to GTW.

91. The Complaint in Docket No. 14-CV-10244 was timely filed by GTW on December 22, 2014 with respect to tax year 2011, pursuant to I.R.C. § 6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

GTW – 2012 Tax Year

92. On or before February 28, 2013, Plaintiff GTW timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2012, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. GTW paid the employer and employee taxes shown as due on the return. GTW's 2012 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 55 (CN000475-478).

93. On June 16, 2014, by certified mail, within the three-year period provided by I.R.C. § 6511(a), GTW timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for

refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by GTW for the year 2012 in the amount of $52,352.82, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by GTW, and withheld by GTW from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) GTW's 2012 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10244, and a true copy is attached hereto as Exhibit 56 (CN000479-485).

94. No portion of the refund claimed by GTW for tax year 2012 has been paid to GTW.

95. More than six months had elapsed after GTW's filing of its refund claim for tax year 2012, without any action or decision by the Internal Revenue Service with respect to such claim, when GTW filed its Complaint in Docket No. 14-CV-10244 on December 22, 2014 with respect to tax year 2012. Pursuant to I.R.C. § 6532(a)(1), GTW's Complaint in Docket No. 14-CV-10244 with respect to tax year 2012 was timely filed.

ICRR – Tax Year 2006

96. On or before February 28, 2007, Plaintiff ICRR timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxa-

ble year ended December 31, 2006, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. ICRR paid the employer and employee taxes shown as due on the return. ICRR's 2006 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 57 (CN000486-489).

97. On February 26, 2010, by certified mail, within the three-year period provided by I.R.C. § 6511(a), ICRR timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by ICRR for the year 2006 in the amount of $1,794,480, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by ICRR, and withheld by ICRR from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) ICRR's 2006 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 58 (CN000490-500).

98. On May 14, 2013, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of ICRR's claim for refund for tax

year 2006. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 59 (CN000501-502).

99. No portion of the refund claimed by ICRR for tax year 2006 has been paid to ICRR.

100. The Complaint in Docket No. 14-CV-10246 was timely filed by ICRR on December 22, 2014 with respect to tax year 2006, pursuant to I.R.C. § 6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

ICRR – Tax Year 2007

101. On or before February 29, 2008, Plaintiff ICRR timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2007, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. ICRR paid the employer and employee taxes shown as due on the return. ICRR's 2007 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 60 (CN000503-507).

102. On May 12, 2010, by certified mail, within the three-year period provided by I.R.C. § 6511(a), ICRR timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by ICRR for the year 2007 in the amount of $1,085,711, plus interest as allowed by law.

Such claim for refund was for Railroad Retirement taxes paid by ICRR, and withheld by ICRR from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) ICRR's 2007 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 61 (CN000508-517).

103. On May 14, 2013, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of ICRR's claim for refund for tax year 2007. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 59 (CN000501-502).

104. No portion of the refund claimed by ICRR for tax year 2007 has been paid to ICRR.

105. The Complaint in Docket No. 14-CV-10246 was timely filed by ICRR on December 22, 2014 with respect to tax year 2007, pursuant to I.R.C. § 6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

ICRR – Tax Year 2008

106. On or before March 2, 2009, Plaintiff ICRR timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxa-

ble year ended December 31, 2008, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. ICRR paid the employer and employee taxes shown as due on the return. ICRR's 2008 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 62 (CN000518).

107. On May 12, 2010, by certified mail, within the three-year period provided by I.R.C. § 6511(a), ICRR timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by ICRR for the year 2008 in the amount of $1,219,406, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by ICRR, and withheld by ICRR from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) ICRR's 2008 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 63 (CN000519-529).

108. On May 14, 2013, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of ICRR's claim for refund for tax

year 2008. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 59 (CN000501-502).

109. No portion of the refund claimed by ICRR for tax year 2008 has been paid to ICRR.

110. The Complaint in Docket No. 14-CV-10246 was timely filed by ICRR on December 22, 2014 with respect to tax year 2008, pursuant to I.R.C. § 6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

ICRR – Tax Year 2009

111. On or before March 1, 2010, Plaintiff ICRR timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2009, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. ICRR paid the employer and employee taxes shown as due on the return. ICRR's 2009 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 64 (CN000530-533).

112. On May 12, 2010, by certified mail, within the three-year period provided by I.R.C. § 6511(a), ICRR timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by ICRR for the year 2009 in the amount of $1,535,983, plus interest as allowed by law.

Such claim for refund was for Railroad Retirement taxes paid by ICRR, and withheld by ICRR from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) ICRR's 2009 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 65 (CN000534-547).

113. On May 14, 2013, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of ICRR's claim for refund for tax year 2009. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 59 (CN000501-502).

114. No portion of the refund claimed by ICRR for tax year 2009 has been paid to ICRR.

115. The Complaint in Docket No. 14-CV-10246 was timely filed by ICRR on December 22, 2014 with respect to tax year 2009, pursuant to I.R.C. § 6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

ICRR – Tax Year 2010

116. On or before February 28, 2011, Plaintiff ICRR timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxa-

ble year ended December 31, 2010, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. ICRR paid the employer and employee taxes shown as due on the return. ICRR's 2010 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 66 (CN000548-549).

117. On September 26, 2012, by certified mail, within the three-year period provided by I.R.C. § 6511(a), ICRR timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by ICRR for the year 2010 in the amount of $2,353,619.16, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by ICRR, and withheld by ICRR from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of non-qualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) ICRR's 2010 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 67 (CN000550-557).

118. On December 27, 2012, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of ICRR's claim for refund for

tax year 2010. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 68 (CN000558-562).

119. No portion of the refund claimed by ICRR for tax year 2010 has been paid to ICRR.

120. The Complaint in Docket No. 14-CV-10246 was timely filed by ICRR on December 22, 2014 with respect to tax year 2010, pursuant to I.R.C. § 6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

ICRR – Tax Year 2011

121. On or before February 29, 2012, Plaintiff ICRR timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2011, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. ICRR paid the employer and employee taxes shown as due on the return. ICRR's 2011 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 69 (CN000563).

122. On September 26, 2012, by certified mail, within the three-year period provided by I.R.C. § 6511(a), ICRR timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by ICRR for the year 2011 in the amount of $1,482,491.29, plus interest as allowed by law. Such claim for refund was for

Railroad Retirement taxes paid by ICRR, and withheld by ICRR from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of non-qualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) ICRR's 2011 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 70 (CN000564-571).

123. On December 27, 2012, by certified mail, the Internal Revenue Service mailed its official notice of disallowance of ICRR's claim for refund for tax year 2011. The official notice of claim disallowance was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 68 (CN000558-562).

124. No portion of the refund claimed by ICRR for tax year 2011 has been paid to ICRR.

125. The Complaint in Docket No. 14-CV-10246 was timely filed by ICRR on December 22, 2014 with respect to tax year 2011, pursuant to I.R.C. § 6532(a), prior to the expiration of two years after the date of mailing of the notice of disallowance.

ICRR – Tax Year 2012

126. On or before February 28, 2013, Plaintiff ICRR timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2012, with the Internal Revenue Service Center, Cincinnati,

Ohio 45999. ICRR paid the employer and employee taxes shown as due on the return. ICRR's 2012 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 71 (CN000572-574).

127. On June 16, 2014, by certified mail, within the three-year period provided by I.R.C. § 6511(a), ICRR timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by ICRR for the year 2012 in the amount of $2,731,670.19, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by ICRR, and withheld by ICRR from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs in these actions.) ICRR's 2012 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 72 (CN000575-585).

128. No portion of the refund claimed by ICRR for tax year 2012 has been paid to ICRR.

129. More than six months had elapsed after ICRR's filing of its refund claim for tax year 2012, without any action or decision by the Internal Revenue Service with respect to such claim, when

ICRR filed its Complaint in Docket No. 14-CV-10246 on December 22, 2014 with respect to tax year 2012. Pursuant to I.R.C. § 6532(a)(1), ICRR's Complaint in Docket No. 14-CV-10246 with respect to tax year 2012 was timely filed.

ICRR – Tax Year 2013

130. On or before February 28, 2014, Plaintiff ICRR timely filed Form CT-1, Employer's Annual Railroad Retirement Tax Return, for the taxable year ended December 31, 2013, with the Internal Revenue Service Center, Cincinnati, Ohio 45999. ICRR paid the employer and employee taxes shown as due on the return. ICRR's 2013 tax return (Form CT-1) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 73 (CN000586-588).

131. On June 16, 2014, by certified mail, within the three-year period provided by I.R.C. § 6511(a), ICRR timely filed with the Internal Revenue Service, Cincinnati, Ohio 45999, its claim for refund (Form CT-1X) of Railroad Retirement taxes paid to the IRS, and withheld from its employees and paid over to the IRS on their behalf, by ICRR for the year 2013 in the amount of $397,598.18, plus interest as allowed by law. Such claim for refund was for Railroad Retirement taxes paid by ICRR, and withheld by ICRR from its employees and paid over, with respect to employees' income in the form of corporate stock on the exercise of nonqualified stock options as described in paragraphs 22-26 above. (Defendant does not stipulate to the correctness of any of the grounds for refund stated in this or any refund claims filed by Plaintiffs

in these actions.) ICRR's 2013 claim for refund (Form CT-1X) was attached to the Complaint filed in Docket No. 14-CV-10246, and a true copy is attached hereto as Exhibit 74 (CN000589-598).

132. No portion of the refund claimed by ICRR for tax year 2013 has been paid to ICRR.

133. More than six months had elapsed after ICRR's filing of its refund claim for tax year 2013, without any action or decision by the Internal Revenue Service with respect to such claim, when ICRR filed its Complaint in Docket No. 14-CV-10246 on December 22, 2014 with respect to tax year 2013. Pursuant to I.R.C. § 6532(a)(1), ICRR's Complaint in Docket No. 14-CV-10246 with respect to tax year 2013 was timely filed.

# # #

Stipulated as of this 27th day of October, 2015.

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